IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.781 OF 1997

Shri Ananda Parsu Sonawane ...Appellant

Versus

Shri Vishnu Parsu Sonawane & Ors. ...Respondents

Shri N.R.Bubna for the Appellant.

CORAM : ABHAY S.OKA, J.
DATED : JULY 10, 2007.

P.C.:

1. The Second Appeal is preferred by the original Defendant No.1 in a suit for partition filed by the first Respondent. The trial Court decreed the suit by holding that the first Respondent is entitled to one half share in the suit property. The Appeal preferred by the Appellant before the District Court has been dismissed.

2. The first submission made by the learned Advocate for the Appellant is that both the Courts have found that a part of the structure on the suit property has been constructed by the Appellant. He submitted that both the Courts without there being any evidence have merely observed that the construction has been carried out by the Appellant from the rental income from the suit property received by him. His grievance is

that the decree has been passed in respect of the entire suit property without protecting the construction carried out by the Appellant-Plaintiff. The second contention is that the Courts below ought to have held that the house property at Hubli standing in the name of the first Respondent-Plaintiff was a joint family property. He submitted that one house constructed by the Appellant is held to be a joint family property. However, Courts below have erroneously excluded the house property at Hubli standing in the name of the first Respondent from the partition. He submitted that the finding recorded by the Appellate Court on the issue of valuation of the suit property for jurisdiction and court fees is completely erroneous and the finding recorded on that aspect is contrary to the evidence on the record and especially evidence of the Government approved valuer led by the Appellant.

3. I have considered the submissions. So far as the first contention is concerned, the Appellate Court has referred to the admission of the Appellant that some portion of the said house was let out to the tenants and the Appellant received Rs.60/- per month from each of the tenants and the Appellant enjoyed total monthly rent of Rs.240/-. The Appellate Court as well as the trial Court found that the rental income was enjoyed by the

Appellant during the period of 40 years and that is the reason why the Courts below have accepted that the Appellant cannot claim equity on the ground that he carried out construction. According to the case of the Appellant he has spent amount on the construction. The trial Court has also elaborately considered the evidence on this aspect and has recorded a categorical finding that infact a contention was raised by the Appellant that unless the first Respondent pays the expenses incurred on construction, partition of the suit property cannot be effected. I find no reason to interfere with the finding recorded by the Courts below.

4. The second contention has no merit. The case made out by the Appellant was that the Respondent No.1-Plaintiff had taken away with him valuables worth Rs.20,000/-. The finding of fact recorded by the Courts below is that the Appellants failed to establish that the first Respondent had taken away valuables worth Rs.20,000/-. The Appellate Court after considering the evidence found that the first Respondent was all along in service and was earning income. The Appellate Court referred to the document at Exhibit 29 which reveals that property at Hubli was taken by the first Respondent on rent at the rate of Rs.4/- per month. After considering the evidence on record, the Courts below

found that the house property standing in the name of the first Respondent at Hubli cannot not be treated as a property of joint property.

5. In so far as the valuation of the suit for court fees is concerned, the Courts below has scanned the entire evidence on record including an opinion of the Government valuer. The courts have considered all the aspects. The Appellate Court has considered that in the year 1981 the value of the property was Rs.27,000/-. The Court found that the suit structure was made up of mud and bricks and therefore, the Court has taken the valuation at Rs.10,000/-. I find no error in the view taken by the Courts below. In any event the valuation of the suit made for the purposes of court fees and jurisdiction did not exceed the pecuniary limit of the jurisdiction of a Court of Civil Judge Junior Division which was at the relevant time Rs.25,000/-. In view of the concurrent findings of fact, no substantial question of law arises. Second Appeal is dismissed.

JUDGE